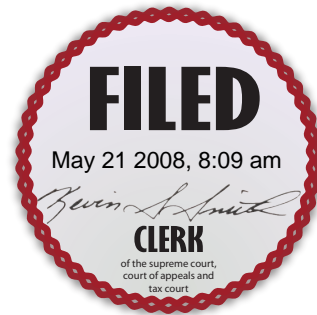


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

JILL M. ACKLIN
Westfield, Indiana

ATTORNEY FOR APPELLEE
MARION COUNTY DEPARTMENT OF
CHILD SERVICES:

ELIZABETH G. FILIPOW
Marion County Department of Child Services
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF N.S., Minor Child, and)
His Mother, DOROTHY M.)

DOROTHY M.,)
Appellant-Respondent,)

vs.)

No. 49A04-0712-JV-676)

MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)
Appellee-Petitioner,)
and)
CHILD ADVOCATES, INC.,)
Appellee.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Danielle Gaughan, Magistrate
Cause No. 49D09-0702-JT-5992

May 21, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Respondent Dorothy M. (“Mother”) appeals an order terminating her parental rights to N.S. upon the petition of the Appellee-Petitioner Marion County Department of Child Services (“the DCS”). We affirm.

Issue

Mother presents a single issue for review: Whether the DCS established, by clear and convincing evidence, the requisite statutory elements to support the termination of her parental rights.

Facts and Procedural History

On June 12, 2004, N.S. was born to Mother and David Shaffner (“Father”).¹ At that time, Mother had five prior-born children and had been receiving parenting services.

On March 31, 2005, the DCS filed a petition alleging that N.S. was a Child in Need of Services because “Dorothy [M.] has five older children who have been removed from her care and custody due to her failure to supervise and protect them from sexual abuse” and “the therapists working with Ms. [M.] and her children have indicated that the services designed to improve Ms. [M.]’s ability to parent have been unsuccessful.” (Exhibits, pg. 89.) On April 6, 2005, N.S. was returned home “on temporary in-home trial visitation.” (Exhibits,

¹ Father is not an active party to this appeal.

pg. 93.) He was removed again on November 4, 2005.

On February 12, 2007, the DCS petitioned to terminate Mother's and Father's parental rights to N.S. On July 30, 2007, the trial court heard evidence and did so again on August 2, 3, 27 and 29, 2007. On October 11, 2007, the trial court entered an order terminating Mother's parental rights to N.S. Mother now appeals.

Discussion and Decision

A. Standard of Review

This court will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship, this Court neither reweighs the evidence nor judges the credibility of the witnesses. Id. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id.

B. Requirements for Involuntary Termination of Parental Rights

Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied. The purpose of terminating parental rights is not to punish the parents, but to protect their children. Id.

Indiana Code Section 31-35-2-4(b) sets out the elements that the DCS must allege and prove by clear and convincing evidence in order to terminate a parent-child relationship:

(A) One (1) of the following exists:

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
- (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

- (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

The trial court must subordinate the interests of a parent to those of the child when evaluating the circumstances surrounding the termination. In re A.A.C., 682 N.E.2d at 544. Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. Id. The trial court need not wait to terminate the parent-child relationship until the child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired. Id.

C. Analysis

Mother contends that the DCS presented insufficient evidence to establish a reasonable probability that the conditions that resulted in the N.S.'s removal will not be remedied or that the continuation of the parent-child relationship would pose a threat to N.S.

More specifically, Mother claims that the trial court minimized her efforts to cooperate with mental health services offered to her and to obtain occupational therapy for N.S.

It is well-settled that a parent's habitual pattern of conduct is relevant to determine whether there is a substantial probability of future neglect or deprivation of the child. In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). Among the circumstances that a trial court may properly consider are a parent's criminal history, drug and alcohol abuse, historical failure to provide support, and lack of adequate housing and employment. McBride v. Monroe County Office of Family and Children, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003).

At the termination hearing, evidence was presented that N.S. has special needs and requires occupational therapy, physical therapy, and speech therapy. N.S. must wear ankle braces. He was diagnosed with Sensory Integration Dysfunction, a brain disorder that prevents his central nervous system from effectively processing sensory input from his environment. N.S. does not feel pain in a typical manner and lacks a normal gag reflex such that he could choke very easily. Consequently, N.S. must be highly supervised and his caretaker must be patient and consistent and maintain a structured routine.

N.S. receives occupational therapy and physical therapy at Reid Hospital in Richmond, Indiana. Occupational therapist Jeremy Vories testified that "half of the job is educating the parents." (Tr. 244.) He opined that merely providing a parental checklist was inadequate and specific training was required. For example, N.S. requires having his mouth brushed before meals to avoid "shoveling in food" and choking. (Tr. 254.) Mother was unable to consistently attend the sessions or to communicate with N.S.'s physician, reporting a lack of transportation and a telephone.

Dr. Mary Papandria (“Dr. Papandria”) conducted a psychological evaluation of Mother and diagnosed a “major depressive disorder, severe, with psychotic features.” (Tr. 25.) Mother also “showed features of a personality disorder with mainly obsessive compulsive and narcissistic features.” (Tr. 25.) At the termination hearing, Dr. Papandria testified to her concern that an individual with these personality features could lack empathy for a child and be unable to meet a child’s needs. She was also “very concerned that [Mother] was not on medication.” (Tr. 34.)

Dr. Papandria had recommended long-term individual therapy for Mother. However, Mother failed to obtain individual therapy and attended group therapy only sporadically. Mother testified that she attended “pretty close to half” her sessions. (Tr. 195.) Home-based service providers recommended that Mother engage in an anger management program. Mother was unsuccessfully discharged from such a program because of non-attendance.

Mother had a sporadic work history and was unable to maintain a consistent source of income. She reported to Dr. Papandria that her longest job had been at Wal-Mart for about one year from 2002 until 2003, but she lost that job when she “got upset and went home to chill out.” (Tr. 22.) As of the termination hearing, Mother was registered with three temporary employment services, and had been assigned some part-time intermittent work.

St. Vincent New Hope provided home-based services to Mother, but Mother was unable or unwilling to maintain her home in a clean and habitable condition. Utilities were disconnected on multiple occasions. The home was roach-infested and lice-infested. On one occasion, N.S. returned from visitation with a roach in his diaper. Mother’s in-home visitation with N.S. was suspended because there was dog feces in Mother’s home and

because her eldest son, who had a juvenile true finding of molesting a sibling, was present in the home.

Mother argues that she had not actually medically neglected N.S. but was merely thought to be at risk of doing so. Thus, in Mother's view, termination of her parental rights was precluded by her "compliance, even at a minimal level, with group therapy," her "intermittent attendance at N.S.'s therapy sessions at Reid Hospital" and her "investigation of therapy options for N.S. in Indianapolis." Appellant's Brief at 11. However, we may not reweigh the evidence, as Mother urges, to find that she has taken adequate measures to provide for N.S.'s special needs.

There is ample evidence that Mother is unable to meet either the basic needs or special needs of N.S. Accordingly, the DCS presented clear and convincing evidence that the conditions leading to N.S.'s removal would not, in reasonable probability, be remedied.

Conclusion

The DCS established by clear and convincing evidence the requisite elements to support the termination of Mother's parental rights to N.S.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.